

## **SUPPLY OF CONSULTANCY SERVICES**

### **GENERAL TERMS AND CONDITIONS OF CONTRACT**

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This Agreement is made this                      day of                      20[                      ]

BETWEEN:

**(1) EASTLEIGH BOROUGH COUNCIL**, of Eastleigh House, Upper Market Street, Eastleigh, Hampshire, SO50 9YN ("the Council")

and

**(2) [                      ]** of [                      ] OR [Company Number [                      ] and whose registered offices is at [                      ] ("the Supplier"),

## 1 DEFINITIONS

In this Agreement unless the context otherwise requires the following definitions shall apply.

**“Authority”** means Eastleigh Borough Council and where the context permits, reference to the Authority shall include reference to an employee of the Authority.

**“Fees”** means the price or rate for the Project stated in the Purchase Order.

**“Key Personnel”** means any person named on the Purchase Order as key personnel or any person who the Authority notifies the Supplier is to be regarded as a key personnel during the course of the Project.

**“Premises”** means any land or building where the Project is to be carried out.

**“Project”** means the consultancy services described in the Purchase Order and any associated documentation.

**“Order Number”** means the unique number that appears on the Purchase Order.

**“Parties”** means both the Authority and the Consultant.

**“Purchase Order”** means an order for consultancy services served by the Authority on the Consultant which includes a description of the Project, the Fees payable and any terms applying to the Project which are additional to these Terms and Conditions.

**“Consultant”** means the person, firm or company whose name appears as the addressee in the Purchase Order.

**“Terms and Conditions”** means these terms and conditions for the supply of Consultancy Services.

## **2 GENERAL**

- 2.1 These Terms and Conditions together with the relevant Purchase Order and any other document, plan or specification referred to in the Purchase Order constitute the contract between the Parties for the Project (“the Contract”).
- 2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Purchase Order, the term of the Purchase Order shall prevail.
- 2.3 The Contract constitutes the entire agreement between the parties relating to the Project and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However nothing in the Contract shall limit or exclude any liability for fraud.
- 2.4 Nothing in this Contract shall have the effect of making the Consultant a servant or employee of the Authority.

## **3 THE PROJECT**

- 3.1 The Consultant shall carry out and complete the Project:
  - 3.1.1 in accordance with the Purchase Order;
  - 3.1.2 with reasonable skill, care and diligence;
  - 3.1.3 to the reasonable satisfaction of the Authority’s representative
  - 3.1.4 with reasonable care and diligence expected of someone with the Consultant’s skill and knowledge;
- 3.2 The Consultant shall not place or cause to be placed any orders with third parties or otherwise incur any liabilities to third parties in the name of the Authority without the prior written consent of the Authority.

## **4 TIME OF PERFORMANCE**

- 4.1 The Consultant shall carry out the Project by the date or in accordance with the timescales set out in the Purchase Order or in accordance with any timescales reasonably notified to the Consultant by the Authority.
- 4.2 The Consultant shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.
- 4.3 The Contractor shall notify the Authority immediately if it becomes aware of any event that it believes is likely to delay or impede the Project.
- 4.4 In the event that the Consultant fails to meet a date or dates set out in the Purchase Order or comply with the timescales contained in the Purchase Order it shall, on the request of the Authority, and without prejudice to the Authority’s other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Authority.

## **5 REJECTION OF SERVICES**

- 5.1 The Authority may at any time give notice of the Consultant's default in performing the Project or anything delivered as part of the Project which in the reasonable opinion of the Authority does not comply with the Purchase Order or these Terms and Conditions in any material way.
- 5.2 If the Authority gives notice under Condition 5.1 above, it shall give the reasons for such default in its notice.
- 5.3 Following receipt of such notice of rejection of the Services, the Consultant shall have 5 (five) working days (or such other period as the Parties may agree in writing) during which the Contractor shall correct the faults which caused the notice to be issued.
- 5.4 Without prejudice to the Authority's other rights under this Contract, if the Consultant fails to correct the faults to the reasonable satisfaction of the Authority within 5 (five) working days (or such longer period as the Parties have agreed), the Authority shall be entitled to terminate this Contract.

## **6. CONSULTANT'S PERSONNEL AND SECURITY**

- 6.1 The Consultant shall make Key Personnel available for the purposes of the Project and shall not make any changes in the Key Personnel without the prior written approval of the Authority.
- 6.2 If and when requested by the Authority, the Consultant shall provide the Authority with a list of the names and addresses of any person being used in the Project or any part of it specifying in each case the capacities in which they are involved and giving such other particulars and evidence of identity and other supporting evidence as the Authority may reasonably require.
- 6.3 The Consultant shall comply with any notice reasonably given by the Authority stating that a person named in the notice is not to be involved any further in the provision of the Project. The Consultant shall bear the cost of complying with such a notice.
- 6.4 Where the Project is being carried out at Premises owned or occupied by the Authority:
  - a) the Consultant shall comply and shall ensure that its staff, sub-contractors and agents comply with any rules or regulations applied by the Authority in relation security at its premises;
  - b) if the Authority gives the Consultant notice that any person is not to be admitted to or is to be removed from its land or premises or is not to become involved or is to be removed from involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice and shall bear the cost of any such

notice. The Consultant shall ensure that any person who is removed is replaced by someone of equivalent qualifications and experience.

- 6.5 If the Consultant employs anyone for the purposes of providing the Project, the Consultant shall not unlawfully discriminate within the meaning and scope of the provisions of any act of parliament relating to discrimination in employment.

## **7. PAYMENT**

- 7.1 In consideration of the carrying out of the Project by the Consultant the Authority shall pay the Consultant the Fees.
- 7.2 The Consultant shall submit an invoice for the Project to the Authority's address for invoices given in the Purchase Order. The invoice shall contain the Order Number and a description of the part of the Project to which it refers and the applicable Fees.
- 7.3 The Consultant shall be entitled to be reimbursed its reasonable expenses actually and reasonably incurred in connection with the Project subject to production of such receipts and documentation as Authority reasonably requires. Expenses shall be reimbursable at the Authority's member allowance rates which the Authority shall provide on request.
- 7.4 The Authority shall pay the Consultant within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.
- 7.5 In addition to the Price, the Authority shall pay the Consultant a sum equivalent to any Value Added Tax chargeable in respect of the Project. Value Added Tax shall be shown as a separate item on the Consultant's invoice.
- 7.6 The Consultant shall be entirely responsible for the payment of all and any income tax, national insurance contributions and any similar liabilities on any Fees earned under this Contract.
- 7.7 The Contractor shall implement any legislative requirement to account for goods and services in Euro instead of or as well as Sterling at no cost to the Authority. The Authority shall provide all reasonable assistance to facilitate any such requirement.

## **8 RECOVERY OF SUMS DUE**

- 8.1 If any sum is recoverable from or payable by the Consultant under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Consultant under the Contract or under any other agreement with the Authority.

## **9 AUDIT**

- 9.1 The Consultant shall keep and maintain until two years after the Contract has been

completed records to the satisfaction of the Authority of all costs and expenditures connected with the Project which are reimbursable by the Authority. This shall include records of the hours worked and costs incurred by the Consultant and the costs of any employees of the Consultant paid for by the Authority. The Consultant shall on request afford the Authority or any person reasonably specified by the Authority such access to those records.

## **10 INTELLECTUAL PROPERTY**

- 10.1 The intellectual property rights (including the copyright) in any reports, documentation or materials are hereby assigned to and shall vest in the Authority. This condition shall survive the termination of this Contract.
- 10.2 Save where the Project uses documentation and materials supplied by the Authority, the Consultant warrants that none of the documentation and materials used or created as part of the Project shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party.
- 10.3 The Consultant shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and Authority basis) which the Authority may incur as a result of or in connection with any breach of clause 10.2.

## **11 HEALTH AND SAFETY**

- 11.1 The Consultant shall notify the Authority of any health and safety hazards which may arise in connection with the performance of this Contract.
- 11.2 Where the project is being carried out at a Premises owned or occupied by the Authority, the Authority shall notify the Consultant of any health and safety hazards which may exist or arise at its premises and which may affect the Consultant. The Consultant shall draw these hazards to the attention of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

## **12 CONFIDENTIALITY**

- 12.1 The Consultant undertakes to keep secret and not to disclose and to procure that its employees, subcontractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information which is already in the public domain or the possession of the Consultant other than by reason of breach of this clause.
- 12.2 The provisions of this Condition shall survive the termination of this Contract however that occurs.

## **13 CONFLICTS OF INTEREST**

- 13.1 The Consultant shall disclose to the Authority any actual or potential conflict of interest arising from the Project as soon as is reasonably practicable after

becoming aware of the conflict.

- 13.2 If the Parties are unable to resolve the conflict to the reasonable satisfaction of the Authority, the Authority shall be entitled to terminate the Contract with immediate effect.

## **14 INDEMNITY AND INSURANCE**

- 14.1 Without prejudice to any rights or remedies of the Authority the Consultant shall indemnify the Authority against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Services or any negligence or breach of this Contract by the Consultant.
- 14.2 The Consultant (if an individual) warrants and represents that he is regarded by both the Inland Revenue and the Department of Works and Pensions as self-employed and accordingly shall indemnify the Authority against any tax, national insurance contributions or similar liability which may arise in relation to this Contract.
- 14.3 The Consultant warrants that it has in place with a reputable insurance company a policy or policies of insurance relating to all matters that are the subject of indemnities and undertakings on the part of the Consultant contained in this Contract. In particular, unless the Authority agrees that such insurance is unnecessary the Consultant warrants that the work done in relation to the Project is covered by a policy of professional indemnity insurance. At the request of the Authority the Consultant shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

## **15 CHANGE CONTROL**

- 15.1 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Authority and the Consultant.
- 15.2 The price for any variation (if applicable) shall be the fair and reasonable price taking into account the market price available to the Authority for similar work or services.
- 15.3 If any change is agreed to anything included on the Purchase Order the Authority reserves the right to issue a replacement Purchase Order. These terms and conditions shall apply to any replacement purchase order as if it were the original Purchase Order.

## **16 ASSIGNMENT OR SUB-CONTRACTING**

- 16.1 The Consultant shall not assign or sub-contract any part of the Project without the written consent of the Authority.

- 16.2 No sub-contracting of this Contracts shall in any way relieve the Consultant of its obligations under the Contract.
- 16.3 Where the Consultant enters a sub-contract for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Consultant to pay the sub-contractor within 30 days of receipt of a valid invoice.

## **17 RIGHTS OF THIRD PARTIES**

This Contract shall not create any rights which are enforceable by anyone other than the Parties.

## **18 TERMINATION**

- 18.1 The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:
- a) (where the Consultant is an individual) if a petition is presented for the Consultant's bankruptcy or a criminal bankruptcy order is made against the Consultant, or the Consultant makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit or creditors, or if an administrator is appointed to manage his affairs;
  - b) (where the Consultant is a firm; or a number of persons acting together in any capacity) if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company; or
  - c) where the Consultant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 18.2 The Authority shall be entitled to terminate this Contract by notice to the Consultant with immediate effect if:
- a) any of the events described in Condition 18.1 occurs;
  - b) the Consultant has committed a material breach of this Contract which is not capable of remedy; or
  - c) the Consultant has committed a material breach of this Contract which is capable of remedy but has failed to remedy such breach within thirty days of being required by the Authority in writing to do so; or
  - d) (where the Consultant is an individual), if he shall die or be adjudged Incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.



- 18.3 The Authority shall be entitled to terminate this Contract at any time by giving to the Consultant not less than thirty days' notice to that effect.

## **19 NOTICES**

- 19.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Authority must be sent to its address given for the buyer contact on the Purchase Order and not its address for invoices.
- 19.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving party proves otherwise.

## **20 GOVERNING LAW**

- 20.1 Unless the Purchase Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

## **21 BRIBERY AND CORRUPTION**

The Authority may cancel the contract and recover from the Consultant the amount of any loss resulting from such cancellation:

- 21.1 If the Consultant shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Authority or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Authority or
- 21.2 If the like acts shall have been done by any person in the employ or on behalf of the Consultant (whether with or without the Consultant's knowledge, or
- 21.3 If in relation to any contract with the Authority the Consultant or any person in the employ of or acting on the Consultant's behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

## **22 DATA PROTECTION**

- 22.1 In this section, the following definitions shall apply -

"GDPR" means the General Data Protection Regulation ((EU) 2016/679) and the UK GDPR at such time it comes into force

“DPA” means Data Protection Act 2018

“Data Protection Legislation” means: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the UK GDPR when it enters into force; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

“Personal Data” means the personal data as defined by the Data Protection Legislation and as provided by or on behalf of the Authority

“Personal Data Breach” a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data.

22.2 With respect to the parties’ obligations under this Contract, the parties agree that the Authority is the data controller, and that the Supplier is the data processor for the purposes of the Data Protection Legislation

22.3 The following categories of Personal Data will be collected processed and used by the Consultant under this Agreement

- i) Personal Data
- ii) categories of data subjects

The following data subject categories may be collected processed and used by the Consultant under this Agreement:

- i. complaints, enquirers or their representatives
- ii. customers
- iii. members of the public
- iv. persons contracted to provide a service (suppliers)
- v. professional advisers and consultants
- vi. service users and their representatives
- vii. staff, persons contracted to provide a service
- viii. traders and others subject to inspection
- ix. representatives of other organisations

22.4 The Consultant shall:

a) comply at all times with provisions equivalent to the Data Protection Legislation and shall not perform its obligation under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation;

- b) maintain up to date records of processing activities under its responsibility and make those records available to the Authority for inspection on request;
- c) process Personal Data only in accordance with the documented instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Consultant) and for no other purpose;
- d) process Personal Data only to the extent, and in such a manner, as is necessary for the provision of the Contract's obligations, or as is required by law or any regulatory body;
- e) implement appropriate technical and organisational measures to protect Personal Data against a Personal Data Breach. These measures shall be appropriate to the risk of harm which might result from any such breach of security having regard to the nature of Personal Data which is to be protected as shall be required by Article 32-36 GDPR;
- f) take reasonable steps to ensure the reliability of any personnel who have access to Personal Data;
- g) ensure that personnel without appropriate authority do not have access to Personal Data;
- h) obtain prior written consent from the Authority in order to transfer Personal Data to any subcontractors or affiliates for the provision of the Contract and oblige by way of contract or other legal authority any subcontractors or affiliates to comply with the same data protection obligations as those set out in these clauses;
- i) ensure that all personnel required to access Personal Data are informed of the confidential nature of Personal Data and comply with the obligations as set out in these clauses;
- j) ensure that all personnel receive an adequate level of training in data protection;
- k) notify the Authority within twenty four hours if it becomes aware of a breach or alleged breach of the Data Protection Legislation and;
- l) provide the Authority with full co-operation and assistance in relation to investigating breaches to include inspection of premises and security arrangements if requested.
- m) notify the Authority within five Working Days if it receives a request under Chapter 3 GDPR as applicable or a complaint relating to the Authority's obligations under the Data Protection Legislation either to the Information Commission Officer or otherwise.
- n) provide the Authority with full co-operation and assistance in relation to any complaint or request made under, Chapter 3 GDPR including by:

- i) providing the Authority with full details of the complaint or request or;
- ii) providing the Authority with any information requested by the Authority within the timescales required by the Authority;

o) the Consultant shall, upon reasonable notice, allow officers of the Authority to have reasonable rights of access at all times to the Consultant's premises, staff and records for the purposes of monitoring the Consultant's compliance with the Data Protection Legislation including its security requirements.

- 22.5 No Personal Data supplied to the Consultant shall be transferred or processed outside the UK or the European Economic Area.
- 22.6 On termination of this Contract the Consultant shall return all Personal Data or destroy or dispose of it in a secure manner and in accordance with any specific instructions issued by the Authority in writing.
- 22.7 The Consultant agrees to indemnify the Authority against all losses claims damages liabilities costs and expenses (including reasonable legal costs) that the Authority may incur as a result of the Consultant's failure to comply with the Data Protection Legislation as required by these clauses.

## **23 MODERN SLAVERY**

In performing its obligations under the agreement, the Consultant shall:

- a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations [and codes] from time to time in force [including [but not limited to] the Modern Slavery Act 2015]; [and]
- b) comply with the Anti-slavery Policy **OR** have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; [and]
- c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; [and]
- d) include in its contracts with its [direct] subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 23 **OR** ensure that each of its [direct] subcontractors and suppliers shall comply with the Anti- slavery policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations [and codes] from time to time in force [including [but not limited to] the Modern Slavery Act 2015].

## 24 FREEDOM OF INFORMATION

### Definitions

**Commercially Sensitive Information:** the information listed in schedule [X] comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

**Environmental Information Regulations:** the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Information:** has the meaning given under section 84 of FOIA.

**Representatives:** means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisors.

**Request for Information:** a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**Clauses**

**24.1 Freedom of information**

24.2 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

24.3 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

Signed for and on behalf of Eastleigh Borough Council:

.....  
Authorised Signatory

.....  
Authorised Signatory

Signed for and on behalf of the Consultant:

.....  
Director

**SCHEDULE X**



**SCHEDULE X**